

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

.....	X	
SECURITIES INVESTOR PROTECTION	:	
CORPORATION,	:	
	:	
Plaintiff,	:	Adv. Pro. No. 08-1789 (BRL)
	:	
v.	:	SIPA LIQUIDATION
	:	
BERNARD L. MADOFF INVESTMENT	:	(substantively consolidated)
SECURITIES LLC,	:	
	:	
Defendant.	:	
.....	X	
In re:	:	
	:	
BERNARD L. MADOFF,	:	
	:	
Debtor.	:	
.....	X	

**DECLARATION OF RICHARD A. KIRBY IN SUPPORT OF
CUSTOMERS' SUPPLEMENTAL BRIEF OPPOSING TRUSTEE'S
MOTION FOR AN ORDER REJECTING AN INFLATION ADJUSTMENT
TO THE CALCULATION OF "NET EQUITY"**

I, Richard A. Kirby, hereby declare as follows:

1. I am a partner of K&L Gates LLP ("K&L Gates") with offices located at 1601 K Street, NW, Washington, DC, 20006-1600, Washington, D.C. My firm serves as one of the counsel to the group of defrauded Madoff Securities customers (collectively, the "Customers") in the above-captioned proceeding. I am authorized to make this Declaration on the Customers' behalf.

2. Attached hereto as Exhibit A is a true and correct copy of Trustee Irving H. Picard's Responses And Objections to Customers' Request For Production of Documents dated February 22, 2013.

3. Attached hereto as Exhibit B is a true and correct copy of excerpts from the deposition of Robert J. Rock taken on March 27, 2013.

4. Attached hereto as Exhibit C is a true and correct copy of excerpts from the deposition of Vineet Sehgal taken on April 12, 2013.

5. Attached hereto as Exhibit D is a true and correct copy of a letter the Trustee emailed to the Court on September 11, 2009.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Richard A. Kirby

Richard A. Kirby

Dated: April 26, 2013
Washington, D.C.

CERTIFICATE OF SERVICE

I certify that on April 26, 2013, I arranged for electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record via the CM/ECF system.

s/ Richard A. Kirby
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EXHIBIT A

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Bernard L. Madoff Investment Securities LLC*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

SIPA LIQUIDATION
Adv. Pro. No. 08-01789 (BRL)

(substantively consolidated)

**TRUSTEE IRVING H. PICARD'S RESPONSES AND OBJECTIONS TO
CUSTOMERS' REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Rules 7026 and
7034 of the Federal Rules of Bankruptcy Procedure and all applicable Local Civil Rules, Irving

H. Picard, Esq. (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, et seq. ("SIPA"), and Bernard L. Madoff ("Madoff"), by and through his counsel, Baker & Hostetler LLP, hereby responds to the Customers' Request for Production of Documents (the "Request") served on December 17, 2012, in connection with the Trustee's Motion for an Order Affirming the Trustee's Calculation of Net Equity and Denying Time-Based Damages, dated October 12, 2012 (the "Motion").

GENERAL OBJECTIONS

The Trustee sets forth the following General Objections which are hereby fully incorporated into each and every numbered response:

1. The Trustee objects to this Request to the extent that it seeks to enlarge and/or expand the scope of discovery as set forth by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the Local Rules of this District and this Court, and any other applicable rules and procedures. The Trustee will respond to these Requests consistent with these rules.

2. The Trustee objects to the Request to the extent that production of the documents sought would violate the Protective Order entered on June 6, 2011, in the matter of *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC, et al.*, Adv. Pro. No. 08-01789 (BRL) (the "Protective Order"), or any amendments to or subsequent orders that may be entered in this case, any applicable orders entered by any other court of competent jurisdiction, and/or any other applicable federal or state law.

3. The Trustee further objects to the extent documents responsive to this Request are in the possession, custody, and control of, and/or may be more reasonably obtained from, third parties and/or the Customers.

4. The Trustee objects to any request seeking documents concerning communications between the Trustee and the Securities Investor Protection Corporation ("SIPC"), and/or any regulator or governmental agency, including, without limitation, the Securities and Exchange Commission ("SEC"), the Financial Industry Regulatory Authority ("FINRA"), the Federal Bureau of Investigation ("FBI"), the United States Attorney's Office ("USAO") for the Southern District of New York, or any grand jury, on the grounds that such communications are deemed confidential and are protected by the attorney-client privilege, the common interest privilege, the investigatory privilege, and/or the bankruptcy crimes investigation privilege. In addition, the Trustee objects to the production of any such communications on the grounds that they are protected under the work product doctrine.

5. The Trustee objects to any request that seeks documents that are protected by the investigatory privilege, as that privilege was articulated in *Fiero Bros., Inc. v. Mishkin (In re Adler, Coleman Clearing Corp.)*, 95-08102 JLG, 1999 WL 1747410 (S.D.N.Y. Dec. 8, 1999). The investigatory privilege is "a qualified common law privilege protecting civil, as well as criminal law-enforcement investigatory files from civil discovery." *Id.* at 3. The Trustee is a SIPA Trustee entrusted with the responsibility to locate and recover the assets of BLMIS and distribute those assets to injured investors. The documents in the files of the Trustee are shielded from discovery in civil litigation by the investigatory privilege.

6. The Trustee objects to any request that seeks documents that are protected by the bankruptcy crimes investigation privilege, as that privilege was articulated in *In re Stockbridge*

Funding Corp., 153 B.R. 654 (Bankr. S.D.N.Y. 1993). The bankruptcy crimes investigation privilege extends the law enforcement privilege to bankruptcy trustees, protecting investigatory materials that relate to crimes or potential crimes committed by insolvent debtors, in this instance BLMIS. The Trustee's investigation and liquidation of BLMIS has required an intensive review of the mechanism by which Bernard Madoff perpetuated a multi-billion dollar Ponzi scheme. The materials covered by the bankruptcy crimes privilege extend beyond the communications to the federal enforcement agencies regarding the criminal conduct to include witnesses, evidence and information gathered in the investigation.

7. The Trustee objects to any request that otherwise seeks the production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges, and/or work product doctrine.

8. The Trustee objects to any request that seeks the production of documents that include any information that is of a private and sensitive nature, the disclosure of which would violate the rights of privacy, secrecy and/or confidentiality that belongs to others, and/or that would otherwise violate any existing confidentiality agreements. Any documents that the Trustee agrees to produce that are branded "Confidential" are to remain confidential pursuant to the governing June 6, 2011, Protective Order. Any documents that the Trustee agrees to produce that are branded "Attorneys' Eyes Only" are not to be distributed beyond the attorneys listed on pages 5 and 6 of the Request and their professionals. These documents have not been redacted for personally identifiable information ("PII"). Pursuant to the Protective Order and applicable laws, the Customers are obligated to redact PII should these documents be used or disclosed in this or any other adversary proceeding. The Trustee also objects to producing any documents that are subject to a court order.

9. The Trustee objects to many of these requests, as set forth in more detail below, on the ground that the burden or expense of producing the information called for outweighs the likely benefit, considering the needs of the case and the importance of the request in resolving the issues in dispute. *See* Fed. R. Civ. P. 26(g)(1)(B)(iii). In considering the elevated burdens that a Trustee faces in producing information, the Bankruptcy Court has noted that “[t]he purpose of discovery is to uncover facts, not to pose insuperable barriers to the assertion of a cause of action by a trustee in bankruptcy who is necessarily handicapped by lack of first-hand knowledge.” *Lipshie v. Cablevision of Brookline (In re Geauga Trenching Corp.)*, 102 B.R. 304, 311 (Bankr. E.D.N.Y. 1989) (denying motion to compel Trustee to supplement answers to Interrogatories because he answered to the best of his ability).

10. The Trustee objects to these requests to the extent they seek information that could be obtained by a more appropriate mode of discovery, is redundant or duplicative of information already obtained, is premature, is unnecessarily cumulative, and/or is more easily obtained from some other source that is more convenient, less burdensome, or less expensive. The Trustee further objects to any request that seeks information already in Customers’ possession, is otherwise publicly available or is primarily or exclusively within Customers’ possession, custody, or control.

11. The Trustee further objects to any request seeking information that is irrelevant, immaterial and/or unnecessary or not reasonably calculated to lead to the discovery of relevant or admissible evidence.

12. As the Trustee’s investigation and discovery are ongoing, the Trustee responds to this Request subject to, and without waiving, the right to change, modify, supplement or clarify

the objections and responses contained herein at any time. These responses are made without prejudice to the Trustee's right to produce subsequently discovered evidence.

13. Providing a document in response to a request does not mean that the Trustee admits that the document or the information contained therein is relevant, material, competent, or admissible. The Trustee does not waive his objection to the request pursuant to which the information was produced. The Trustee specifically reserves the right to object on any grounds to the introduction of any documents produced or any information contained therein for any reason, including, without limitation, to the relevancy, admissibility or materiality of the information, or that the Request is in not any way reasonably calculated to lead to the discovery of admissible evidence.

14. The Trustee's specific objections to a request or lack thereof should not be construed to mean that documents responsive to that request exist. Similarly, the statement that the Trustee will produce documents in response to any particular request should not be construed to mean that any such documents exist but rather that efforts will be made to search the universe of documents in connection with that particular request.

15. Nothing in these responses is intended to be or may be construed as a waiver of the attorney-client privilege, the work product doctrine, the common interest privilege, the investigatory or bankruptcy crimes investigation privileges and/or any other privilege, doctrine, or immunity. In the event that a document or information subject to the foregoing privileges and protections is produced, the production of such document or information is purely inadvertent and unintended and is not in any way a waiver of the applicable privilege or other protection from disclosure. The Trustee reserves the right to seek the return of any inadvertently produced documents.

16. These responses are based on information available at the present time to the Trustee.

17. The foregoing General Objections are incorporated by reference into each and/or all of the following responses. By setting forth specific objections below, the Trustee does not, and does not intend to, limit or restrict these General Objections; however, the Trustee may reiterate specific objections to any of the document requests below without waiver of any objection not specifically stated.

SPECIFIC OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. The Trustee objects to the "Definitions" and "Instructions" to the extent they deviate from, conflict with, or impose greater obligations than the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and the Local Rules of this District and this Court, including, but not limited to, the purported definitions of terms set forth in Definitions 1(a-g).

2. The Trustee objects to Definition No. 1 regarding the term, "Alix Partners, LLP," Definition No. 7 of You to include Alix, and Instruction No. 3 that the Request calls for documents "within the Trustee's possession, custody or control, including documents within the possession of Alix." The Request is directed to the Trustee and Robert J. Rock and therefore for purposes of this Response, the Trustee will construe the definition of Alix to be limited to Robert J. Rock.

3. The Trustee objects to Definition No. 2 regarding the terms "and" and "or" as vague, ambiguous, unduly burdensome and beyond the scope of the Trustee's obligations pursuant to the Federal Rules of Civil Procedure. The Trustee does not know what is meant by "all responses that might otherwise be construed to be outside its scope."

4. The Trustee objects to Definition No. 7 regarding the terms “You” and “Your” as overbroad and unduly burdensome to the extent they would apply to anyone other than the Trustee, and also to the extent they would apply to the Trustee in any capacity other than his role as Trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC.

5. The Trustee objects to Instruction No. 2 as overbroad, unduly burdensome, and beyond the scope of what is required pursuant to the Federal Rules of Civil Procedure. The Trustee is in possession of a massive document collection of BLMIS data, hosted in multiple databases and currently consisting of more than 28,800,000 documents (4.0 terabytes of data), exclusive of third-party documents.

6. The Trustee objects to Instruction No. 3 as overbroad, unduly burdensome, and beyond the scope of what is required pursuant to the Federal Rules of Civil Procedure.

7. The Trustee objects to Instruction No. 4 as overbroad, unduly burdensome, and beyond the scope of what is required pursuant to the Federal Rules of Civil Procedure.

8. The Trustee objects to Instruction No. 5 as overbroad, unduly burdensome, and beyond the scope of what is required pursuant to the Federal Rules of Civil Procedure.

9. The Trustee objects to Instruction No. 7 to the extent it purports to impose obligations beyond those required by the Federal Rules of Civil Procedure and other applicable rules.

SPECIFIC OBJECTIONS AND RESPONSES TO INDIVIDUAL REQUESTS

Document Request No. 1

All documents or information providing the factual basis for the statements and conclusions in the Rock Declaration.

Response to Request No. 1

The Trustee objects to this Request to the extent that it seeks production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges and/or the work product doctrine as referenced in General Objections 4 – 7, which are hereby specifically incorporated by reference.

Subject to and without waiver of the foregoing Specific and General Objections, the Trustee responds that he will produce all responsive, non-privileged documents containing Mr. Rock's analyses and calculations in connection with the Declaration of Robert J. Rock submitted in connection with the Trustee's Motion for an Order Affirming the Trustee's Calculation of Net Equity and Denying Time-Based Damages, dated October 12, 2012 (the "Rock Declaration"), conditioned on the Customers' agreement that all produced documents be treated Attorneys' Eyes Only pursuant to General Objection 8 and not disseminated beyond the counsel listed on pages 5 and 6 of the Customers' Request and their professionals.

Document Request No. 2

All documents containing the "calculations related to Time-Based Damages," as referenced in the Rock Declaration. *See* Rock Declaration ¶ 4.

Response to Request No. 2

The Trustee objects to this Request to the extent that it seeks production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges and/or the work product doctrine as referenced in General Objections 4 – 7, which are hereby specifically incorporated by reference.

Subject to and without waiver of the foregoing Specific and General Objections, the Trustee responds that he will produce all responsive, non-privileged documents containing Mr.

Rock's analyses and calculations in connection with the Rock Declaration, conditioned on the Customers' agreement that all produced documents be treated Attorneys' Eyes Only pursuant to General Objection 8 and not disseminated beyond the counsel listed on pages 5 and 6 of the Customers' Request and their professionals.

Document Request No. 3

All documents describing or evidencing the "significant additional work necessary" to implement an inflation adjustment to customer net equity calculations. Rock Declaration ¶ 4.

Response to Request No. 3

The Trustee objects to this Request to the extent that it seeks production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges and/or the work product doctrine as referenced in General Objections 4 – 7, which are hereby specifically incorporated by reference.

Subject to and without waiver of the foregoing Specific and General Objections, the Trustee responds that he will produce all responsive, non-privileged documents containing Mr. Rock's analyses and calculations in connection with the Rock Declaration, conditioned on the Customers' agreement that all produced documents be treated Attorneys' Eyes Only pursuant to General Objection 8 and not disseminated beyond the counsel listed on pages 5 and 6 of the Customers' Request and their professionals.

Document Request No. 4

All documents containing or describing the analysis performed by Mr. Rock to ascertain how an inflation adjustment to customer net equity claims would purportedly affect distributions to customers. Rock Declaration ¶ 5.

Response to Request No. 4

The Trustee objects to this Request to the extent that it seeks production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges and/or the work product doctrine as referenced in General Objections 4 – 7, which are hereby specifically incorporated by reference.

Subject to and without waiver of the foregoing Specific and General Objections, the Trustee responds that he will produce all responsive, non-privileged documents containing Mr. Rock's analyses and calculations in connection with the Rock Declaration, conditioned on the Customers' agreement that all produced documents be treated Attorneys' Eyes Only pursuant to General Objection 8 and not disseminated beyond the counsel listed on pages 5 and 6 of the Customers' Request and their professionals.

Document Request No. 5

All documents or information providing the factual basis for the conclusions described in paragraphs 6 through 13 of the Rock Declaration.

Response to Request No. 5

The Trustee objects to this Request on the grounds that it is duplicative of Requests No. 1 through 4.

The Trustee objects to this Request to the extent that it seeks production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges and/or the work product doctrine as referenced in General Objections 4 – 7, which are hereby specifically incorporated by reference.

Subject to and without waiver of the foregoing Specific and General Objections, the Trustee responds that he will produce all responsive, non-privileged documents containing Mr.

Rock's analyses and calculations in connection with the Rock Declaration, conditioned on the Customers' agreement that all produced documents be treated Attorneys' Eyes Only pursuant to General Objection 8 and not disseminated beyond the counsel listed on pages 5 and 6 of the Customers' Request and their professionals.

Document Request No. 6

All documents or information providing the factual basis for the assertion that implementation of an inflation adjustment to net equity would necessitate a "transaction-by-transaction, account-by-account review." Trustee's Memorandum at 26.

Response to Request No. 6

The Trustee objects to this Request on the grounds that it is beyond the permissible scope of discovery. Discovery related to the Trustee's legal arguments in the Motion is not permitted under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure or the Local Rules of this District and this Court, and any other applicable rules and procedures as referenced in General Objection No. 1.

The Trustee objects to this Request to the extent that it seeks production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges and/or the work product doctrine as referenced in General Objections 4 – 7, which are hereby specifically incorporated by reference.

Subject to and without waiver of the foregoing Specific and General Objections, the Trustee responds that he will produce all responsive, non-privileged documents containing Mr. Rock's analyses and calculations in connection with the Rock Declaration, conditioned on the Customers' agreement that all produced documents be treated Attorneys' Eyes Only pursuant to

General Objection 8 and not disseminated beyond the counsel listed on pages 5 and 6 of the Customers' Request and their professionals.

Document Request No. 7

All documents or information providing the factual basis for the assertion that "[i]t is expected to take as long as twelve months to perform" an inflation adjustment "and reissue determination letters" Trustee's Memorandum at 26.

Response to Request No. 7

The Trustee objects to this Request on the grounds that it is beyond the permissible scope of discovery. Discovery related to the Trustee's legal arguments in the Motion is not permitted under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure or the Local Rules of this District and this Court, and any other applicable rules and procedures as referenced in General Objection No. 1.

The Trustee objects to this Request to the extent that it seeks production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges and/or the work product doctrine as referenced in General Objections 4 – 7, which are hereby specifically incorporated by reference.

Document Request No. 8

All documents or information providing the factual basis for the assertion that an inflation adjustment could "increase . . . administration costs in the tens of millions of dollars." Trustee's Memorandum at 26.

Response to Request No. 8

The Trustee objects to this Request on the grounds that it is beyond the permissible scope of discovery. Discovery related to the Trustee's legal arguments in the Motion is not permitted under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure or the Local Rules of this District and this Court, and any other applicable rules and procedures as referenced in General Objection No. 1.

The Trustee objects to this Request to the extent that it seeks production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges and/or the work product doctrine as referenced in General Objections 4 – 7, which are hereby specifically incorporated by reference.

Document Request No. 9

All documents discussing or analyzing the effect of an inflation adjustment on feeder funds as compared to individual customers.

Response to Request No. 9

The Trustee objects to this Request on the grounds that it is beyond the permissible scope of discovery. Discovery related to the Trustee's legal arguments in the Motion is not permitted under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure or the Local Rules of this District and this Court, and any other applicable rules and procedures as referenced in General Objection No. 1.

The Trustee objects to this Request to the extent that it seeks production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges and/or the work product doctrine as referenced in General Objections 4 – 7, which are hereby specifically incorporated by reference.

Subject to and without waiver of the foregoing Specific and General Objections, the Trustee responds that he will produce all responsive, non-privileged documents containing Mr. Rock's analyses and calculations in connection with the Rock Declaration, conditioned on the Customers' agreement that all produced documents be treated Attorneys' Eyes Only pursuant to General Objection 8 and not disseminated beyond the counsel listed on pages 5 and 6 of the Customers' Request and their professionals.

Document Request No. 10

Documents summarizing or compiling the number and nature of "the settlements reached thus far" by the Trustee. Trustee's Memorandum at 26; Rock Declaration ¶ 4.

Response to Request No. 10

The Trustee objects to this Request on the grounds that it is vague and ambiguous as to the "nature of 'the settlements reached thus far by the Trustee.'"

The Trustee objects to this Request on the grounds that it is beyond the permissible scope of discovery. Discovery related to the Trustee's legal arguments in the Motion is not permitted under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure or the Local Rules of this District and this Court, and any other applicable rules and procedures as referenced in General Objection No. 1.

The Trustee objects to this Request to the extent that it seeks production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges and/or the work product doctrine as referenced in General Objections 4 – 7 and 10, which are hereby specifically incorporated by reference.

Subject to and without waiver of the foregoing Specific and General Objections, the Trustee responds that he will produce all responsive, non-privileged documents containing Mr.

Rock's analyses and calculations in connection with the Rock Declaration, conditioned on the Customers' agreement that all produced documents be treated Attorneys' Eyes Only pursuant to General Objection 8 and not disseminated beyond the counsel listed on pages 5 and 6 of the Customers' Request and their professionals.

Document Request No. 11

To the extent not included within the foregoing requests, any other documents that support the Trustee's argument that implementation of an inflation adjustment will result in undue burden, cost, or delay.

Response to Request No. 11

The Trustee objects to this Request on the grounds that it is duplicative of Requests 1 – 10.

The Trustee objects to this Request on the grounds that it is beyond the permissible scope of discovery. Discovery related to the Trustee's legal arguments in the Motion is not permitted under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure or the Local Rules of this District and this Court, and any other applicable rules and procedures as referenced in General Objection No. 1.

The Trustee objects to this Request to the extent that it seeks production of documents protected by the attorney-client, common interest, investigatory and bankruptcy crimes investigation privileges and/or the work product doctrine as referenced in General Objections 4 – 7, which are hereby specifically incorporated by reference.

Subject to and without waiver of the foregoing Specific and General Objections, the Trustee responds that he will produce all responsive, non-privileged documents containing Mr. Rock's analyses and calculations in connection with the Rock Declaration, conditioned on the

Customers' agreement that all produced documents be treated Attorneys' Eyes Only pursuant to General Objection 8 and not disseminated beyond the counsel listed on pages 5 and 6 of the Customers' Request and their professionals.

Dated: February 22, 2013

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SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L.
Madoff*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 22nd day of February, 2013 by First Class mail and electronic mail upon the following:

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Karin S. Jenson

*An Attorney for Irving H. Picard, Esq., Trustee
for the Liquidation of Bernard L. Madoff
Investment Securities LLC*

EXHIBIT B

Page 1

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----)
5 SECURITIES INVESTOR PROTECTION
6 CORPORATION,

Plaintiff-Applicant,

vs.

Adv. Pro. No.

08-01789(BRL)

7 BERNARD L. MADOFF INVESTMENT
8 SECURITIES LLC,

Defendant.

9 -----)
10 In re:

11 BERNARD L. MADOFF,

Debtor.

12 -----)

13 CONFIDENTIAL

14 SUBJECT TO PROTECTIVE ORDER

15
16 DEPOSITION OF ROBERT J. ROCK

17 New York, New York

18 March 27, 2013

19
20
21
22
23
24 Reported by:
25 Linda Salzman

VERITEXT REPORTING COMPANY

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1 R. Rock - Confidential

2 they're serving as the claims agent in this
3 proceeding.

4 The firm may have had other
5 advisory or consulting roles early on. I
6 know the firm has been involved in the matter
7 for several years. And may have even gotten
8 involved prior to Mr. Picard becoming --
9 getting appointed, so the firm's been
10 involved for quite a few years, and what all
11 the roles have been, I couldn't tell you
12 specifically.

13 Q. Do you understand what the term
14 "claims agent" means?

15 A. I have a lay understanding, yeah.

16 Q. When was the first time you
17 personally became involved in anything
18 relating to the Madoff matter?

19 A. Would have been, I believe,
20 September timeframe of 2012.

21 Q. September 2012?

22 A. Yeah. I was not involved in
23 anything at all in the Madoff matter prior to
24 this case, excuse me, getting involved with
25 my Declaration.

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2 court and that lays out procedures.

3 You know, I wouldn't want to try to
4 give my own interpretation, when we know in
5 fact there's an order out there, so I'm not
6 sure what you mean.

7 Q. Okay.

8 Why don't we turn back to your
9 Declaration and ask you to turn to paragraph
10 3 of that Declaration. And I ask you to
11 refer to the last sentence of paragraph 3.

12 It reads:

13 "My work, along with the work of my
14 staff, has been limited to the analysis of
15 the time-based damages issue as described
16 herein."

17 And can you describe for me what
18 your assignment was with respect to this
19 matter?

20 A. Yes, I would say in general the
21 assignment was to perform calculations,
22 constant dollar calculations making certain
23 assumptions and then provide various analyses
24 to counsel, which they had requested.

25 And so we were provided data given

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2 various assumptions. We checked some
3 figures. We did calculations. We reviewed
4 it. We discussed with counsel some of our
5 findings. Did additional calculations.
6 Additional summaries and so on.

7 So we went through, as you learned
8 from yesterday when we met, two or three
9 iterations for example of calculations. But
10 in general it was to prepare an analysis
11 demonstrating, given certain assumptions what
12 the impacts of constant dollar calculation
13 would be as relates -- impacts would be on
14 the claims as well as certain customer
15 accounts.

16 Would some go up, would some go
17 down. "Yes" is the obvious answer.

18 So my understanding in general was
19 to perform a calculation. Not to arrive at
20 what the final legal opinions or anything
21 like that would be.

22 Q. When you say assumptions, I'd like
23 you to be -- to explain to me what your
24 understanding of the assumptions were you
25 asked to make with respect to the analysis?

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2 A. And I'll try to list them for you.
3 If I miss some, if I remember during the day
4 or if it pops into my head, I might
5 supplement the list.

6 But one assumption in our
7 calculations was make the assumption that the
8 recovery by the estate would be \$10 billion.

9 So when we did our cash payment
10 calculations, we needed to have a feel for
11 what amount would be allowed to be
12 distributed and divvy that up amongst the
13 accounts, so that's an assumption we made or
14 were told to make.

15 Second assumption is as it relates
16 to SIPC, is if there's a \$500,000 per account
17 cap.

18 Third assumption -- these aren't in
19 any order, but a third one is we would
20 utilize the BLS consumer price index. I've
21 got it listed here, the consumer price index,
22 all urban customers, U.S. city average, it's
23 a lengthy title, but for purposes of arriving
24 at the time, value of money or constant
25 dollar calculation, use that statistic.

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2 A fourth would be that we were
3 provided with a detailed file of, that
4 contained certain information, such as
5 account numbers, all activity within those
6 accounts.

7 By "activity," I'm talking ins and
8 outs, cash-wise and/or transfers between
9 accounts.

10 We were provided with information
11 as it relates to in that file, inter-account
12 transfers, and as we discussed yesterday,
13 there were -- the information provided on
14 that analysis provided on that to essentially
15 arrive at a cap for those transfers of
16 available cash in the account.

17 Information also provided about
18 whether a claim had been filed was included
19 in that file, so now I'm in a subset of the
20 information we were provided where a claim
21 had been filed yes or no for that account,
22 whether the account had activity or not,
23 whether there had been any transactions on
24 the account at all, whether the account was a
25 feeder fund or not.

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2 would like you to review the document, and
3 for the record today, tell us what that
4 document is.

5 A. Okay. Give me a second here.

6 Without checking every page -- can
7 I ask a question, do you mind?

8 Q. Sure.

9 A. Is this a copy of what we provided
10 to you yesterday?

11 Q. Correct.

12 A. Great. Without checking every
13 page, I'll accept that.

14 This document, I believe, and it's
15 Rock 2, but the Bates number is Rock 038 on
16 the cover page of this file, I believe that
17 this file represents the original file that
18 we were provided by counsel that included
19 many of the things that I mentioned on the
20 record already.

21 Q. About the assumptions that you were
22 being --

23 A. About the information that was
24 provided. I think it falls under the
25 assumption category because we were given

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2 this and essentially assume these are the
3 transactions, assume this is the activity,
4 and assume that this labeling is active or
5 inactive or claim filed or not filed.

6 Did you want me to walk through it
7 in more detail, or no?

8 Q. I think if I coach you through
9 that, I think it might be easier to walk
10 through --

11 A. That's fine. I didn't know if you
12 wanted me to go further.

13 Q. Let's just turn to the second page
14 of this document, which is labeled, "Table of
15 Contents."

16 And then behind the Table of
17 Contents is a listing of various files. And
18 can you just walk through what these various
19 files are for the record?

20 A. Yes. This Table of Contents page,
21 this has a description of, it's labeled here
22 as reports, but essentially on the native
23 file there's a tab for each of these and then
24 each includes that file or report.

25 So the first tab is the

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2 Q. Okay.

3 A. I can't remember -- it looks like
4 on this one we did not recopy the headings.

5 Q. Do you have any reason to believe
6 that the information and data that you were
7 provided was not reliable?

8 A. I have no basis one way or the
9 other. I haven't done any work so I accepted
10 it as is.

11 Q. Okay.

12 A. Nothing has been told to me. I
13 have not become aware of anything that says
14 it's not reliable, but I have not done any
15 testing.

16 Q. So basically in preparing your
17 report, you just assumed the reliability of
18 the estate?

19 A. I accepted it for purposes of the
20 calculations. So that's all I did.

21 Q. So let's go back to the index
22 page --

23 A. Contents?

24 Q. Contents page.

25 A. Yes.

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2 not be that voluminous. It's maybe going to
3 be however many pages it would take to put
4 the months for those 28 years on. This is
5 not that voluminous a file.

6 Q. Let's go back to the Table of
7 Contents page on Rock 2. There is an account
8 population file.

9 Can you describe what that account
10 population file is?

11 A. This file is provided and it
12 contains some of the information I described
13 earlier. It's got account number, whether or
14 not a particular account has been included in
15 the analysis. Whether there's a claim filed,
16 if something has been excluded from the
17 analysis, there's a reason given.

18 Far two columns, whether it's a
19 feeder fund, yes or no. Is it an active
20 account, yes or no.

21 Similar to the last two tabs that
22 we looked at included in this Rock Exhibit 2
23 is the top page from that file, and the
24 bottom page from the file. This would be a
25 fairly voluminous one because this includes

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2 8,097 different accounts.

3 Q. Okay.

4 And what did you understand the
5 8,097 accounts to be?

6 A. My understanding was it was the set
7 -- first of all, it was given to us as, I
8 assume this is the population of all possible
9 accounts that can be included for purposes of
10 this analysis.

11 Q. Okay.

12 And just so that I understand it,
13 on the labels that are across the top of the
14 first page, you did not do any independent
15 determination as to whether these should be
16 included or not included, this was given to
17 you?

18 A. I want to make sure I understand
19 the question.

20 Q. This file represents in Rock 2 the
21 file as provided to you by counsel?

22 A. Yes, it does.

23 Q. Okay.

24 So when it says, "to be included,
25 reason for exclusion," all that information

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2 method that we utilized in our calculations.

3 We weren't told to utilize that.

4 We could have used either of these two in our
5 calculations. We just felt that was the
6 easiest. It's a very common method.

7 Q. But you were not asked to provide
8 an opinion or otherwise about what
9 methodology to use. You simply used this
10 methodology that you were provided; is that
11 correct?

12 A. We used a very commonly used
13 methodology. We weren't asked to determine
14 is there one preferred over another because I
15 don't think there is. The calculation
16 actually includes two different -- each of
17 these methods is included in this.

18 Q. Essentially the -- arithmetically
19 they reach the same result?

20 A. Absolutely. Not just essentially,
21 but absolutely, yeah.

22 Q. Let's just finish and exhaust what
23 we know about this file -- what you know
24 about this file.

25 The transfer model example, could

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2 A. That's fine.

3 Q. Look at the second sentence. You
4 say in the first sentence:

5 "I have performed certain
6 calculations related to time-based damages."

7 In the second sentence, you say:

8 "These calculations included
9 adjusting for inflation the transactions for
10 all active BLMIS accounts for which a
11 customer claim was filed (the 'inflationary
12 adjustment')."

13 Explain to me what you mean by
14 adjusting for inflation the transactions for
15 all active accounts.

16 A. Simply that. There was a separate
17 CPI factor for each day throughout the
18 period, and then there was a calculation
19 performed of each of the transactions in the
20 file that we ultimately utilized, so there's
21 some -- once again, this says where a claim
22 was filed and an active account.

23 So we did not do calculations on
24 the inactive accounts or where there was no
25 claim filed.

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2 So that he would bring that
3 transaction amount up to the December 2008
4 date. It's now been impacted for constant
5 dollars. I'm sorry, I'm not sure exactly if
6 that answers your question.

7 Q. But functionally, when you say you
8 did the calculation, in other words, in
9 today's computer world, is it my
10 understanding what you did, you applied a
11 formula for a spreadsheet and then pushed the
12 button and then it implemented the
13 calculation; is that correct?

14 A. Yeah, and since it's a pretty large
15 file, it didn't -- we're pretty anxious in
16 this current day and age. It didn't hit
17 immediately like you all want because it's a
18 big file.

19 But if you go back to Rock Exhibit
20 2, one of the files in here was the CPI file
21 by day.

22 Q. Correct.

23 A. So that was one of the pieces that
24 was included in the formula calculation, so
25 that's why this file was prepared that way.

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2 calculation on something that's irrelevant,
3 I'm trying to understand what the purpose of
4 the question is.

5 Q. Assume that we may disagree with
6 the relevance. What I'm asking you about the
7 question is, what additional work would you
8 need to do to do a computation for all
9 accounts, even those accounts that did not
10 file claims, for example?

11 A. For example, all you would do then
12 in your hypothetical, if you said Mr. Rock,
13 you've done calculations on 400 accounts, if
14 I asked you to perform calculations on the
15 other 3,600 accounts, what would I need to
16 do, I would need to include all those
17 transactions and do the same calculation.

18 Q. And how much additional work would
19 that entail?

20 A. "How much," in a sense of what?

21 Q. How long would that take you?

22 A. I don't think that would be that
23 much from the length of time standpoint. I
24 think it would be a matter of essentially
25 including another 220,000 transactions in the

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2 calculation file, but a computer can do the
3 calculations really quickly.

4 Q. How much additional work would that
5 entail for you to set up that formula for
6 that purpose?

7 A. Not that much.

8 Q. Okay. I want to return to Rock 1
9 which is your -- paragraph 4?

10 A. Yeah.

11 Q. And in that third sentence, which
12 says, "Specifically," are you with me?

13 A. Yes, I'm there.

14 Q. "Specifically to account for
15 inflation, I made these calculations using
16 the monthly report" -- and I'm going to skip
17 over to -- and I'm just going to call it the
18 CPI index for this purpose -- "and used
19 adjustments to account balances as of April
20 30, 2012."

21 Okay.

22 What is this adjustments to the
23 account balances as of April 30, 2012? What
24 do you mean by that?

25 A. The only thing I'm aware of is the

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2 you would need to reach a resolution and then
3 impact this analysis for that.

4 So those would be two levels of
5 activity that would need to be done.

6 Q. So we have a population, as I
7 understand it, in this group as 4,394
8 accounts. Is that what's the total --

9 A. That's what we've done our
10 calculation on, yes.

11 Q. You're saying there's the
12 settlement accounts, plus the 100 in which
13 there's got to be more examination of those
14 numbers, that's your understanding from
15 counsel?

16 A. It's my understanding based upon
17 our review, calculations we did, questions we
18 provided to both counsel and AlixPartners,
19 people that had worked on this information,
20 you know, whoever put together these
21 adjustment amounts, that, in fact, when we
22 started looking at things, and I don't know
23 what they did, but they -- my assumption is
24 after we raised our questions and issues,
25 they said: Okay, wipe out those adjustment

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2 columns. We need to do more work on each and
3 every one of those to make sure we're
4 comfortable with them.

5 Q. So let's assume that's 517, which
6 is all the records plus the 100, that's 617?

7 A. Okay.

8 Q. You still have to run computations
9 of 4,394 is the number of accounts. Let's
10 take 600 off of that. So that's 3,700 and
11 change, right?

12 A. Whatever it comes out to be, yeah.

13 Q. For those accounts that aren't
14 affected by settlements or affected by these
15 100 unresolved issues, what else needs to be
16 done with respect to those accounts, in your
17 judgment, that would not -- what additional
18 work would need to be done in order to not be
19 able to rely on the number in column E?

20 A. I don't know. I don't know if
21 there's additional work that would need to be
22 done on those accounts, excluding all those
23 accounts that had disputes and were settled
24 or still have disputes.

25 Excluding all those, if there's

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2 additional work to be done on the remainder,
3 I'm not sure. I'm not aware of specific work
4 right now, but there might be.

5 Q. You just don't know?

6 A. I don't know, correct. To get to
7 that column, which is entirely separate from
8 the payment calculation, yeah, okay.

9 Q. I would like to take you back to
10 the 38, which is Rock 2. You've testified
11 that, and if you look at the tabs that are
12 the adjustment tabs in this column, and the
13 explanation of adjustments, and then the
14 balance of adjustment columns that you were
15 given, and you recall that you described that
16 those were numbers that were given to you?

17 A. Yes.

18 Q. Okay.

19 And then you described -- you told
20 us earlier that you spent a fair amount of
21 time going back and forth with counsel about
22 how to make adjustments to your computation
23 to reflect what the information that you'd be
24 given in these adjustment balances, correct?

25 A. No.

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2 Q. You didn't spend any time doing
3 that?

4 A. I didn't say a fair amount of time.
5 We did calculations and then had questions
6 and then discussions, but some of them dealt
7 with the adjustment columns. Others dealt
8 with other things unrelated to the adjustment
9 columns, so there wasn't an analysis by us
10 specifically of the adjustment columns.

11 You know what I'm saying? So we
12 had questions that were a variety of things.
13 Seemed like a number of them dealt with the
14 adjustment columns, but it wasn't a specific
15 analysis for just that, and I wouldn't say it
16 was a ton of time as compared with other
17 things.

18 Q. Well, can you give me an estimate
19 of how much time was involved in the
20 discussion of these adjustment columns?

21 A. No. Hours, but I don't know how
22 much.

23 Q. You said to me earlier that your
24 estimate of the amount of time that you
25 billed with respect to this matter in

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2 preparation of your declaration was roughly
3 in the 120,000 range?

4 A. That's not what I said. What I
5 said is I gave you a high number and said it
6 was less than.

7 Q. Less than that?

8 A. Less than that. So whether it's 90
9 or 102, I don't know. I'm not giving an
10 estimate of 120.

11 Q. So it's in that order of magnitude?

12 A. It's under that order of magnitude.

13 Q. Under that order of magnitude.

14 Okay, fair enough.

15 My question is this: Did that
16 number that you gave us include any time
17 spent in connection with the preparation for
18 today?

19 A. It's all the time that's been
20 incurred up through a couple of days ago when
21 I took a look at it.

22 In other words, there was some time
23 in like yesterday, for example, it would be
24 yesterday and us kind of organizing the files
25 and copying them.

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2 rules. You don't like them, you can go
3 to court. You either wrap it up or
4 we're done.

5 What do you got?

6 MR. SCHWED: I'm asking him what,
7 from the mechanical point of view, would
8 be necessary on that account in order to
9 bring it up to inflation adjustment,
10 that hypothetical account. I'm not
11 asking about the --

12 MR. SHEEHAN: Which hypothetical
13 account?

14 MR. SCHWED: The \$2 million --

15 MR. SHEEHAN: He already answered
16 that.

17 MR. SCHWED: Maybe you could
18 refresh my recollection. What was his
19 answer?

20 MR. SHEEHAN: It wouldn't take very
21 much. 2000 to 2008, \$1 million. No
22 other transactions. Wouldn't take much.
23 I think an orangutan could answer that
24 question.

25 MR. SCHWED: That's a good answer.

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C E R T I F I C A T E

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, Linda Salzman, a Notary Public
within and for the State of New York,
do hereby certify:

That ROBERT J. ROCK, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 1st day of
March, 2013.

Linda Salzman

EXHIBIT C

Page 1

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -x

5 SECURITIES INVESTOR PROTECTION
6 CORPORATION,

7 Plaintiff-Applicant,

8 vs.

Adv. Pro. No.
08-01789 (BRL)

9 BERNARD L. MADOFF INVESTMENT
10 SECURITIES LLC,

11 Defendant.

12 - - - - -x

13 In re:

14 BERNARD L. MADOFF,

15 Debtor.

16 - - - - -x

17 -- C O N F I D E N T I A L --

18 30(b)(6) DEPOSITION OF VINEET SEHGAL

19 New York, New York

20 April 12, 2013

21 Reported by:

22 Helen Mitchell
23
24
25

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2 A Well, all those accounts -- the
3 517 accounts entered into settlement agreements
4 with the trustee. We have calculated the math
5 part, the CPI adjustment, for all 8,000
6 accounts. There's still some process left
7 within the math itself. We have got the initial
8 output out of a model, but it hasn't been
9 thoroughly validated, it hasn't been thoroughly
10 reconciled, and it hasn't gotten through a
11 thorough QC process, which it will need to if we
12 ever move away from cash in and cash out and
13 toward the CPI adjustment.

14 But those 517 accounts in
15 particular, they entered into settlement
16 agreements with the trustee. Over 400 of those
17 agreements have the net equity provision in
18 them.

19 Q What do you mean, the net equity
20 provision?

21 A The trustee stated within those
22 settlement agreements, say if by chance the
23 court orders the trustee to move away from the
24 cash in/cash out and finds that methodology
25 incorrect, and instructs him to use methodology

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2 different than cash in and cash out -- for
3 example, CPI here -- the trustee will
4 retroactively visit those settlements and
5 discuss next steps with the settling party.

6 Q It is your understanding that
7 there is a common theme to those settlement
8 agreements, or is each one sui generis?

9 A The settlement agreements are very
10 unique. There's not really a generic settlement
11 model that was utilized by the trustee.

12 Q And are you aware of an analysis
13 that has been done as to -- are you aware of
14 whether --

15 MR. KIRBY: Strike that, let me
16 start over again.

17 Q Are you aware whether the trustee
18 has conducted a preliminary analysis as to what
19 adjustments would be made on those accounts?

20 A No. There was a good faith effort
21 on the part of my team to say, you know, we're
22 comparing cash in and cash out against CPI, so
23 what we really wanted to provide counsel here,
24 when this process started, was to say, look, if
25 we don't move away from -- here's cash in and

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2 two categories that I just mentioned.

3 All those state within the
4 determination letter to say if there's any
5 change in the trustee's calculation of cash in
6 and cash out, and the court rules to apply a
7 different methodology, the trustee will
8 retroactively revisit that determination and
9 redetermine that account.

10 Q But as we've seen from -- at least
11 as Mr. Rock explained to us, that inflation
12 adjustment has already -- the math has already
13 been done on those accounts; correct?

14 A The preliminary math has been
15 complete. There are some tasks associated with
16 finalization of the account balances which have
17 not been completed.

18 Q Can you tell me what those tasks
19 are?

20 A Sure. Like I said, there is a
21 comprehensive QC that needs to occur with all
22 these transactions to make sure that everything
23 is working as it's supposed to be. You know,
24 we're going to test sample accounts, we're going
25 to test accounts that have huge swings, we're

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2 going to test accounts that have small swings,
3 and look for data anomalies.

4 When we first created the cash in
5 and cash out books and records -- FTI Consulting
6 was involved in this case as well, ran their own
7 independent process, and we reconciled every
8 single account and every single transaction with
9 FTI Consulting on a cash in and cash out basis
10 to make sure we were both coming to the same
11 answer.

12 Right now, for all 8,000-plus
13 accounts, and all 500,000 cash transactions that
14 make up the account histories for all those
15 8,000 accounts, we reconciled to the penny with
16 FTI Consulting. To my knowledge, they don't
17 have a model created on CPI, and I would think
18 that they would need to do the same exact
19 exercise and reconcile each of those accounts
20 and each of those transactions with those -- if
21 we do move away from cash in and cash out.

22 Q And tell me what the components of
23 that analysis would be.

24 A Can you rephrase that?

25 Q Well, you've told us that you

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2 formula for doing that, what would your estimate
3 be going forward of what it would cost to do a
4 quality control analysis of the results of that?
5 Would you have an estimate of what it would cost
6 for you to do that?

7 A Well, let just use CPI as an
8 example, if the court orders us to, say, move
9 away from cash in and cash out and utilize a CPI
10 adjustment to all these accounts. Like we said,
11 the initial math is there, all the transactions
12 have been adjusted. We would have to validate
13 all the transactions, and get comfortable that
14 these result are accurate, and then we would
15 have, you know -- likely have FTI Consulting
16 write their own model, run all their
17 transactions and reconcile that with this.

18 I think those two processes, the
19 reconciliation and validation, would probably be
20 done in about a month and a half.

21 Q A month and a half?

22 A That's right.

23 Q And do you have an estimate of the
24 man hours that would be involved in that?

25 A No, I don't. But, again, that's

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2 only associated with the math part. What the
3 trustee's asserting here is that account by
4 account and transaction by transaction, and the
5 cost and the burden he's referring to is the
6 bankruptcy process that's associated with that
7 math change to these accounts, that's what's
8 going to take the 12 to the 18 months.

9 Q Can you explain that further for
10 me, please?

11 A Sure.

12 Like I said before, the trustee's
13 received direct claims for about 4500 accounts,
14 and if you exclude the 500 that we talked about
15 that are in settlement and the 120 that are
16 currently in litigation, he's determined 3800
17 accounts.

18 Q Correct.

19 A All those accounts in the
20 determination letter, it clearly states that if
21 the trustee moves away from cash in and cash out
22 due to a court order, he will redetermine those
23 accounts.

24 Q Correct.

25 A The determination process for 3800

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2 accounts is going to be very extensive. We
3 followed the process set out by SIPC for us, the
4 process that they follow in all their cases, to
5 say these accounts actually went through five
6 different levels of review before they got
7 determined. They went through an Alix Partners
8 review, they went through an FTI Consulting
9 review, they went through a SIPC personnel
10 review, they went to a trustee's counsel review,
11 and finally a review by the counsel before an
12 account gets determined.

13 So if we're changing the net
14 equity of an account, if we're going away from
15 cash in and cash out and applying a CPI, and
16 redetermining all those accounts, all 3800
17 accounts are going to need to go through a
18 determination process similar to the one that
19 they went through with the first time.

20 Q So you're suggesting that it would
21 be more than a QC analysis, a quality control?

22 A The quality control analysis is
23 only associated with the math component. The
24 redetermination of accounts is a separate
25 component. That's the bankruptcy process.

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2 date for 2200 accounts. The balances in all
3 those accounts are going to change. We're going
4 to need to catch those accounts up or adjust
5 their distribution in the next distribution that
6 needs to occur.

7 So a combination of all those,
8 which are not concurrent by any means. You have
9 to finish redetermination of the accounts, you
10 have to resolve the objections, you have to
11 figure out what's going to happen with the
12 settlements, and finally get the distributions,
13 is what the trustee is saying is going to take
14 12 to 18 months. It's not the math component.

15 Q So it's -- to put it in your
16 words, it's the bankruptcy process that you've
17 described?

18 A That's right.

19 Q Moving on to the same page, where
20 the sentence at the bottom of that paragraph,
21 under "Delay and Cost," it says, "Furthermore,
22 the trustee expects a concomitant increase in
23 administrative costs in the tens of millions of
24 dollars."

25 Can you tell me what the component

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2 of that tens of millions of dollars is?

3 A It's going to be associated with
4 the bankruptcy process that I just described.
5 If we're going to need to take care of all the
6 redeterminations, figure out -- revisit every
7 single settlement and figure out what needs to
8 happen with all those, deal with the new
9 objections that are coming in, work on the math
10 part, the validation, reconcile this information
11 with FTI Consulting, and finally adjust
12 distributions in all those accounts, and in that
13 process, which I think will last 12 twelve to 18
14 months, will certainly cost tens of millions of
15 dollars.

16 Q Let's talk about that.

17 When you say "tens of millions of
18 dollars," you mean \$10 million or \$90 million?

19 A I don't exactly know, but you can
20 imagine this is, you know, a pretty large case,
21 and if you introduce this kind of a process to
22 redetermine all these accounts, and that has to
23 go through, you know, FTI review, Alix Partners
24 review, SIPC review, trustee's counsel review,
25 the trustee's review, readjusting all those

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2 looked at before, I had asked you to refer to
3 item 16 -- column 16.

4 Do you recall that?

5 A Yes.

6 Q That is 1FRO45, and it's my
7 understanding that that represents the Trotanoy
8 account.

9 A Yes.

10 Q And my question is, the inflation
11 adjustment that has already been made by
12 Mr. Rock for this account -- the math has
13 already been done for the adjustment; is that
14 your understanding?

15 A It appears he's calculated what
16 the CPI value is going to be on this account,
17 yes.

18 Q So let's talk about what are the
19 components that would need to be done to reach a
20 final determination as to what the adjusted
21 claim amount would be, assuming the court were
22 to accept this methodology for -- order the
23 trustee to do an inflation adjustment using the
24 methodology that Mr. Rock applied.

25 A So going back to what I stated

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2 A I really don't have an opinion on
3 that at this point. All I know, this is the
4 process that SIPC's used in all of its cases.
5 This is the process that we used for the first
6 determination of all these accounts, and from
7 what I'm told, this is the process that we're
8 probably going to take when the second
9 redetermination happens. So I haven't really
10 put into thought of what's reasonable and what's
11 not reasonable.

12 Q You just have no view as to
13 whether it's reasonable?

14 A No.

15 MR. KIRBY: I have no further
16 questions.

17 MR. SHEEHAN: Okay. My objection
18 was that he's not here as an expert, but
19 I didn't want to say that and have him
20 start saying, "Well, I'll not an
21 expert." I let him answer it and then I
22 put my objection on the record.

23 (Time noted: 1:29 p.m.)

24

25

C E R T I F I C A T E

I, HELEN MITCHELL, a Shorthand
Reporter and Notary Public, do hereby
certify:

I reported the proceedings in the
within-entitled matter, and that the
within transcript is a true record of
such proceedings.

I further certify that I am not
related, by blood or marriage, to any of
the parties in this matter and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 15th day
of April, 2013.

HELEN MITCHELL

EXHIBIT D

Baker Hostetler

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September 11, 2009

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VIA ELECTRONIC MAIL

Honorable Burton R. Lifland
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: *Securities Investor Protection Corporation v. Bernard L. Madoff Investment
Securities LLC*, 08-1789 (BRL) (Substantively Consolidated)

Dear Judge Lifland:

Baker Hostetler serves as counsel to Irving H. Picard (the "Trustee"), the Trustee for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff.

As stated during the proceedings before your Honor on September 9, please find enclosed a Notice of Settlement of Proposed Order regarding the "net equity" dispute (the "Net Equity Dispute"). We have conferred with counsel and have incorporated, to the extent possible, their suggested revisions to the proposed order.

The Trustee and counsel for interested parties agree upon the framing of at least two points of the Net Equity Dispute: (1) whether a customer's "net equity" under SIPA is equal to "cash in/cash out"; or (2) whether a customer's "net equity" under SIPA is equal to the value of the securities positions and credit balance reflected in the customer's last statement.

At the hearing on September 9, Milberg LLP proposed an additional issue to be included within the Net Equity Dispute, namely – if the Trustee's cash in/cash out methodology for purposes of "net equity" is correct, whether customers are entitled to interest on their cash deposited with BLMIS (the "Interest Issue").¹ The Court initially indicated its reluctance to expand the Net Equity Dispute beyond the basic issues as

¹ Although Milberg LLP raised this particular issue in the objection filed on behalf of Martin Rappaport on June 18, 2009, it was not included in the response filed by Milberg on September 3, 2009 in response to the Trustee's Motion for a scheduling order on net equity, nor was it discussed between counsel prior to the hearing on September 9.

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articulated in the prior paragraph. (See Transcript, 31:20-24). Counsel for the Trustee did not have an objection at that time.

Upon further reflection, the Trustee concurs with the Court's initial view that the Interest Issue is indeed an ancillary issue that is best dealt with as the subject of a separate proceeding. This issue is only relevant to the extent that the Court rules that the Trustee's methodology concerning net equity is correct. If this Court or any higher court were to rule that a customer's net equity is equal to the amounts shown on their customer statement, then the Interest Issue is not implicated.

In light of the above, it is the Trustee's view that the Interest Issue has no bearing on the proper interpretation of the statutory definition of "net equity" under the Securities Investor Protection Act. Instead, it appears to be an argument based on common law principles and equity as to what distribution a customer should be entitled to in a Ponzi scheme, such as is present here.

As it is an issue separate and apart from the statutory interpretation of "net equity," and one that only arises upon a certain determination of the proper interpretation of "net equity," it is more appropriately the subject of an ancillary proceeding. Consideration of the Interest Issue within the confines of the Net Equity Dispute only serves to complicate what should be a pristine, discrete issue of great importance to this liquidation proceeding. In keeping with your Honor's mandate to "keep it simple," the Trustee submits that the resolution of the Interest Issue is best decided in a separate proceeding.

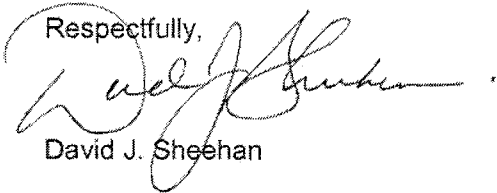
That is not to suggest that the Interest Issue is not also important. The Trustee sees no reason to delay consideration of the Interest Issue and will promptly move for a scheduling order on the that issue, along with other ancillary issues to be presented to the Court, in accordance with the record before the Court on September 9, 2009, and this Court's Memorandum Decision and Order Granting Trustee's Motion to Dismiss Plaintiff's Complaint dated September 10, 2009 ("Ancillary matter raised by various parties will be the subject of separate scheduling orders, similar to the protocols established in the Final Scheduling Order").²

² To the extent that the Memorandum Decision and Order entered on September 10, 2009 mandates consideration of the Interest Issue in the Net Equity Dispute, the Trustee seeks relief from that portion of the Order for the reasons set forth herein and requests that the Court permit that issue to be addressed within a separate proceeding.

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Counsel from Milberg LLP would like the Interest Issue included in the Net Equity Dispute and we understand they may be submitting an objection to the Court regarding the same. Should the Court wish to hear further from the Trustee or other parties regarding these issues, we are of course available at anytime that is convenient for the Court and counsel copied on this letter.

Respectfully,

A handwritten signature in black ink, appearing to read "David J. Sheehan", is written over the word "Respectfully,".

David J. Sheehan

DJS/srb

cc: Helen Davis Chaitman
Matthew Gluck
Jonathan Landers
Barry Lax
Brian Neville
Carol Neville